

C A M P A I G N F O R ACCOUNTABILITY

May 28, 2019

VIA E-MAIL: eoclass@irs.gov

IRS EO Classification
Mail Code 4910DAL
1100 Commerce St.
Dallas, TX 75242-1198

Re: Tax-Exempt Organization Complaint Against Susan B. Anthony List, Inc.
(Referral)
EIN: 54-1850126

Dear Sir or Madam:

Campaign for Accountability (“CfA”)¹ respectfully submits this Tax-Exempt Organization Complaint (Referral) and supporting documentation to the Internal Revenue Service (“IRS”) regarding the activities of Susan B. Anthony List, Inc. (EIN: 54-1850126), a tax-exempt organization under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”). Form 13909 is enclosed with this letter.

Background

The original Susan B. Anthony List, Inc. was formed by Rachel MacNair and incorporated as a Minnesota nonprofit on August 12, 1992.² Ms. MacNair, an anti-abortion Quaker activist, created the organization to be a counterweight to the pro-choice Emily’s List Political Action Committee (“PAC”).³ Ms. MacNair’s organization purportedly aimed to promote and support female anti-choice candidates from both main political parties. Filings submitted to the Federal Election Commission (“FEC”) indicate that the organization operated as a PAC in the 1994, 1996, and 1998 election cycles.⁴

¹ CfA is a Code Section 501(c)(3) tax exempt organization (EIN:54-1850126) that serves as a non-partisan, nonprofit ethics watchdog.

² Original Article of Incorporation available on file with and available from the Office of Minnesota Secretary of State. Accessible at <https://mbisportal.sos.state.mn.us/Business/SearchDetails?filingGuid=c0e856d1-add4-e011-a886-001ec94ffe7f#orderselected>.

³ Emily’s List primarily supports female pro-choice candidates. See e.g., Kate Sheppard, *Susan B. Anthony List Founder: Republicans Hijacked My PAC!*, MOTHER JONES, (February 22, 2012), available at <https://www.motherjones.com/politics/2012/02/susan-b-anthony-list-sharp-right-turn-rachel-macnair/>. Unlike SBA List, Emily’s List is registered as a political organization; acknowledging that its “primary activity” is participation in political campaigns, and that it is subject to the rules of the Federal Election Campaign Act.

⁴ Susan B. Anthony List PAC, Inc. 1997-1998 Financial Summary, Federal Elections Commission, available at <https://www.fec.gov/data/committee/C00280057/>.

In 1993, shortly after Susan B. Anthony List's original formation, Marjorie Dannenfelser, a Washington, D.C. based political operative, joined the organization as its executive director.⁵ At around the same time, another Washington, D.C. political operative, Jane Abraham, became the organization's president. In 1996, Ms. MacNair entered a psychology PhD program and left the Susan B. Anthony List, Inc. under the direction and control of Ms. Dannenfelser and Ms. Abraham.

Under the leadership of Ms. Dannenfelser and Ms. Abraham it appears that Susan B. Anthony List, Inc. was reorganized and relocated closer to Washington, D.C., and that the original Minnesota entity was abandoned. On April 21, 1997 the Minnesota-registered organization changed its name to the "Susan B. Anthony List PAC, Inc." (hereinafter "SBA List PAC"),⁶ and less than a month later, on May 12, 1997, a Virginia corporation named the "Susan B. Anthony List, Inc." ("SBA List") was formed.⁷ SBA List PAC, the original entity, was involuntarily dissolved by the state of Minnesota on December 22, 1999 for failure to submit the required annual renewal reports after December 6, 1995, and remains inactive.⁸

When Ms. Dannenfelser and Ms. Abraham launched the "new and improved" SBA List in 1997 they created a tax-exempt social welfare organization organized under Internal Revenue Code Section 501(c)(4), rather than a political organization.⁹ The IRS approved SBA List's 501(c)(4) tax-exempt status in 2001. At approximately the same time Ms. Dannenfelser and Ms. Abraham also created an affiliated Political Action Committee ("PAC") called the Susan B. Anthony List Candidate Fund ("Candidate Fund PAC") and in 1998 the Candidate Fund PAC filed its first report with the FEC.¹⁰

Although purportedly a social welfare organization, SBA List's main objective has been supporting anti-choice candidates in elections at both the state and federal levels. In 1998 SBA List changed its endorsement criteria and began supporting male anti-choice candidates, even when they ran against pro-choice female candidates.¹¹ In 2010, SBA List specifically targeted twenty anti-abortion Democratic candidates who represented "swing" districts, including women.¹² Additionally, despite its initial intention of supporting anti-choice female candidates

⁵ See Marjorie Dannenfelser, *Exotic Fruits of Grace*, CRISIS MAGAZINE, (January 1, 1997), available at <https://www.crisismagazine.com/1997/exotic-fruits-of-grace>.

⁶ See Ex. A, (Amendment of Articles of Incorporation for Susan B. Anthony List, Inc., filed with the Minnesota Secretary of State, (Apr. 21, 1997)).

⁷ See Ex. B, (Certificate of Incorporation for Susan B. Anthony List, Inc., filed with the State Corporation Commission of the Commonwealth of Virginia, May 12, 1997).

⁸ See Ex. C, (Certificate of Involuntary Dissolution filed by the Minnesota Secretary of State, (Dec. 22, 1999)).

⁹ See History of SBA List, (Oct. 1, 2009), available at https://web.archive.org/web/20091001171130/http://www.sba-list.org/site/c.ddJBKJNsFqG/b.4137933/k.EEF4/History_of_SBA_List.htm.

¹⁰ Susan B. Anthony List Candidate Fund, Committee Filings with the Federal Elections Commission, available at <https://www.fec.gov/data/committee/C00332296/?cycle=1998&tab=filings>.

¹¹ Monica Potts, *Susan B. Anthony's Hit List*, THE AMERICAN PROSPECT, Feb. 15, 2012, available at <https://prospect.org/article/susan-b-anthonys-hit-list>.

¹² Notably SBA List did not target other anti-abortion Democrats who represented non-swing districts. *Id.*

from both main political parties, over 99 percent of the 209 candidates that SBA List has endorsed for office since 2012 have been Republican.¹³ Under half have been women.¹⁴

SBA List operated from its Virginia headquarters from 1997 until 2010, when it relocated to Washington, D.C. Soon thereafter, in 2011, SBA List created a tax-exempt 501(c)(3) organization, the Charlotte Lozier Institute, to conduct “original and interpretive research” aimed at supporting anti-abortion arguments. In 2012, conservative hedge fund manager Sean Fieler joined the board of SBA List.¹⁵ Fieler is also chairman of, and a primary donor to, the tax-exempt organization American Principles Project (“APP”).¹⁶ APP was founded by Francis “Frank” Cannon, who resigned his position as SBA List Treasurer in 2012 in order to run APP. Mr. Cannon did not receive a salary from SBA List while the organization’s treasurer, but he now is compensated handsomely for his reported full-time work for the organization as a consultant. Robert Kania, who took over as SBA List treasurer when Mr. Cannon left, does not receive an SBA List salary.¹⁷ SBA List and APP share board members,¹⁸ collaborate on anti-abortion campaigns,¹⁹ and donate

¹³ See Appendix 1 (Party and Gender of SBA List Endorsed Candidates by Year). In at least three instances since 2012 SBA List has decided to endorse and/or fund a Republican candidate over an anti-abortion Democrat. *Id.*

¹⁴ *Id.*

¹⁵ SBA List Inc., *IRS Form 990-EZ*, 2012, filed on July 16, 2013, available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_01_EO%2F54-1850126_990O_201212.

¹⁶ American Principles Project, *IRS Form 990-EZ*, 2017, filed on Oct. 11, 2018, available at <https://projects.propublica.org/nonprofits/organizations/264613397/201802849349300610/IRS990>.

¹⁷ See, e.g., SBA List’s FY 2012 Form 990, available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_01_EO%2F54-1850126_990O_201212.

Mr. Kania is the subject of a campaign finance complaint in Pennsylvania filed by Campaign for Accountability. Letter from Alice Huling, Counsel, Campaign for Accountability, to Stephen Zappala, Allegheny County District Attorney, and Allegheny County Board of Elections (Apr. 8, 2019), available at <https://campaignforaccountability.org/wp-content/uploads/2019/04/Kania-Campaign-Finance-Complaint-4-8-19.pdf>. Shortly after the complaint was filed, Pennsylvania Governor Tom Wolf removed Mr. Kania from his position on the Allegheny County Port Authority Board. See Ed Blazina, *After Transit Group’s Urging, Gov. Wolf Replaces Port Authority Board Member*, PITTSBURGH POST-GAZETTE, April 11, 2019, available at <https://www.post-gazette.com/news/transportation/2019/04/11/Pittsburghers-for-Public-Transit-group-Gov-Wolf-replace-Port-Authority-board-member-robert-kania/stories/201904110081>. On April 17, 2019 CfA called on the SBA List Inc. to remove Mr. Kania from their Board of Directors. Letter from Alice Huling, Counsel, Campaign for Accountability, to Marjorie Dannenfelser, President, Susan B. Anthony List, Inc., *et al.* (Apr. 17, 2019), available at <https://campaignforaccountability.org/wp-content/uploads/2019/04/CfA-Letter-SBA-List-Kania-Board-4-17-19.pdf>. On May 7, 2019 the Candidate Fund PAC submitted a new Statement of Organization to the Federal Election Commission removing Mr. Kania from his position as treasurer. See Susan B. Anthony List Inc., Candidate Fund, Statement of Organization, Federal Election Commission, May 7, 2019, available at <http://docquery.fec.gov/cgi-bin/forms/C00332296/1329829/>.

¹⁸ See Appendix 2 (Overlapping SBA List, APP, and American Principles Project Foundation Staff and Board Members by Year).

¹⁹ SBA List and APP, along with five other organizations, joined the Life and Marriage Coalition in 2012. See Brian Tashman, *Religious Right Groups Launch the ‘Life and Marriage Coalition,’* RIGHT WING WATCH, Aug. 28, 2012, available at <http://www.rightwingwatch.org/post/religious-right-groups-launch-the-life-and-marriage-coalition/>. In 2014, SBA List contributed \$400,000 to American Principles Project in Action, an APP affiliated PAC, for “general support.” See SBA List Inc., *2014 IRS Form 990*, Schedule I Part II, filed Sept. 28, 2015, available at https://projects.propublica.org/nonprofits/display_990/541850126/2015_10_EO%2F54-1850126_990O_201412. In 2015, SBA List and APP, together, asked Republican presidential hopefuls to pledge to ban abortions after 20 weeks,

to the other organizations' PACs.²⁰ SBA List relocated its headquarters back to Arlington, Virginia in 2018, moving into an office suite adjacent to the APP offices.²¹

In 2012 SBA List also created a Super PAC called Women Speak Out PAC,²² which has become SBA List's primary PAC.²³ The Women Speak Out PAC's board of directors consists of several SBA List officers, including SBA List President Ms. Dannenfelser, Executive Director Emily Buchanan, and Treasurer Mr. Kania, as well as SBA List board members Jane Abraham and Susan Hirschmann.²⁴

SBA List created a fourth affiliated PAC, called the Susan B. Anthony List Action PAC, on October 4, 2018.²⁵

Since its inception, SBA List's organization has morphed from a single PAC overseen by the Federal Election Commission to a tax-exempt social welfare nonprofit linked to multiple political committees and other nonprofit organizations. It appears SBA List has abused its tax-exempt status and committed several tax law violations.

if elected. *See* David Weigel, *Chris Christie Endorses Ban on Abortions After 20 Weeks*, BLOOMBERG, Mar. 30, 2015, available at <https://www.bloomberg.com/news/articles/2015-03-30/chris-christie-endorses-ban-on-abortions-after-20-weeks>.

²⁰ Sean Fieler has made numerous contributions to the Women Speak Out PAC, one of SBA List's affiliated Super PACs. *See* Appendix 3 (Sean Fieler Contributions to the Women Speak Out PAC).

²¹ *See* Ex. D, (Renewal Certificate of Registration filed with the State of Oklahoma Office of Secretary of State (Feb. 12, 2018)).

²² *See* Ex. E, (Women Speak Out PAC Statement of Organization filed with the Federal Election Commission (Sept. 28, 2012)).

²³ *Id.* SBA List board member, Mr. Feiler, himself has donated over \$500,000 directly to the Women Speak Out PAC since its organization in 2012. Sean Fieler contributed \$75,000 in 2012. Sean Fieler's Contributions to the Women Speak Out PAC, FEC 2011-2012 filings, (Oct. 11, 2012), available at https://www.fec.gov/data/receipts/?two_year_transaction_period=2012&c&data_type=processed&committee_id=C00530766&contributor_name=FIELER,+SEAN&min_date=01%2F01%2F2011&max_date=12%2F31%2F2012; Sean Fieler contributed \$385,946.12 in 2014. Sean Fieler's Contributions to Women Speak Out PAC, FEC 2013-2014 filings, (July 9, 2014), available at https://www.fec.gov/data/receipts/?two_year_transaction_period=2014&c&data_type=processed&committee_id=C00530766&contributor_name=FIELER,+SEAN&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014; Sean Fieler contributed \$75,000 to the Women Speak Out PAC in 2015. Sean Fieler's Contributions to the Women Speak Out PAC, FEC 2015-2016, (Aug. 3, 2015) available at https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&c&data_type=processed&committee_id=C00530766&contributor_name=FIELER,+SEAN&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016;

²⁴ Women Speak Out PAC, 2018 Annual Report, Commonwealth of Virginia State Corporation Commission, July 31, 2018, available at <https://sccfile.scc.virginia.gov/07805708/AnnualReport/218531207.pdf>.

²⁵ *See* Ex. F, (SBA List Action PAC Statement of Organization filed with the Federal Election Commission (Oct. 4, 2018)).

Alleged Violations

SBA List Appears to Have Improperly Withheld Information from the IRS on its Form 1024 Application for Tax-Exempt Status

The IRS recognized SBA List as a tax-exempt organization under section 501(c)(4) in 2001 in response to SBA List's September 1997 filing of a Form 1024, on which SBA List failed to provide complete and accurate information.

First, Part II Line 3 of the Form 1024 required the organization to provide "information about [its] governing body," specifically the names, addresses, titles, and annual compensation of its officers, directors, and trustees.²⁶ SBA List named eight individuals: Marjorie Dannenfelser (chairman), Susan Hirschmann (vice chairman), Kate Hinton (secretary), Larry Ruggiero (treasurer), Susan Gibbs, Mary Hallan, Mike Hudome, and Susan Lataif.²⁷ SBA List did not include titles for half of the identified individuals and failed to provide the annual compensation of any of the listed members of its governing body.²⁸ Further, an SBA List brochure attached to the organization's Form 1024 application identifies Jane Abraham as the organization's President and Jennifer Bingham as its Executive Director.²⁹ It appears that, as an officer and director, respectively, both of these women should have been identified as members of SBA List's governing body, but neither was included.

Second, Part II, Line 4 of the August 1997 Form 1024 stated:

If the organization is the outgrowth or continuation of any form of predecessor, state the name of each predecessor, the period during which it was in existence, and the reasons for its termination. Submit copies of all papers by which any transfer of assets was effected [*sic*].³⁰

SBA List wrote that this was "[n]ot applicable" to its application and did not provide any information regarding the Susan B. Anthony List, Inc. registered in Minnesota in 1992.³¹ Instead, SBA List claimed to have formed on May 12, 1997.³² Yet several of the SBA List solicitation letters and brochures attached to the organization's Form 1024 application reference its

²⁶ See Ex. G, at 10 (SBA List, Inc Authorization Letter of Tax Exempt Status Attaching Original Form 1024 Application, Form 1024 Part II(3), (Sept. 7, 1997)).

²⁷ See *id.* at 14 (SBA List response to Form 1024, Part II(3), (Aug. 7, 1997)).

²⁸ *Id.*

²⁹ See *id.* at 22 (SBA List: Training Pro-Life Women in the Political Arena Brochure, (Aug. 7, 1997)).

³⁰ See *id.* at 10 (SBA List Tax Exemption Application, Form 1024, Part II(4), (Sept. 7, 1997)).

³¹ See Ex. H, (Certification of Incorporation, filed with the State of Minnesota Secretary of State, (Aug. 12, 1992)).

³² See Ex. G, at 9 (SBA List. Application for Tax Exempt Status, Form 1024, Part II(5), (Aug. 7, 1997)).

“successes” from the 1994 and 1996 election cycles, which, necessarily, must have been achieved by the original, Minnesota-registered organization.³³

Further, many of the individuals listed as officers and board members on SBA List’s Form 1024 application also were involved with the original Minnesota-registered organization. For example, SBA List chairman, Marjorie Dannenfelser, served as executive director of the original Susan B. Anthony List.³⁴ Similarly, SBA List president, Jane Abraham, also had been president of the original organization.³⁵

In addition, according to SBA List’s 1997 solicitation letters, the Minnesota-based Susan B. Anthony List, Inc. raised over \$313,000 in 1996.³⁶ Based upon SBA List’s own literature discussing the 1996 fundraising efforts, it appears likely that SBA List may have succeeded to the assets and activities of the original Susan B. Anthony List, Inc. SBA List was required to provide copies of any documents relating to such a transfer in its application for tax-exempt status, but failed to do so.

In sum, it appears SBA List is an “outgrowth or continuation” of its predecessor Susan B. Anthony List, Inc., yet in its application for tax-exempt status, SBA List omitted information identifying its predecessor organization or any assets transferred from it, while simultaneously co-opting that predecessor’s accomplishments as its own.

Third, Part II Line 5 of the August 1997 Form 1024 reads:

If the applicant organization is now, or plans to be, connected in any way with any other organization, describe the other organization and explain the relationship (e.g., financial support on a continuing basis; shared facilities or employees; same officers, directors, or trustees).³⁷

In response, SBA List wrote simply “SBA List plans to have an internal political action committee (PAC).”³⁸ Indeed, on January 8, 1998 SBA List filed a Statement of Organization for

³³“During the past two elections, the SBA List’s political committee helped ten pro-life women get elected to the U.S. House of Representatives.” *See id.* at 23, (SBA List Candidate Information Letter (July 31, 1999)); “In 1996, with our members’ support, we increased our membership 350% from 1,000 to 3,500.” *See id.* at 25 (SBA List “Bash on Capitol Hill” Invitation Letter, (Aug.15, 1997)); “During the past two elections, ten pro-life women were elected to the U.S. House of Representatives. . . . In 1996 alone Susan B. Anthony List’s political committee increased its membership 350% to 3,500 and we raised over \$313,000, an increase of 525% from the previous year.” *See id.* at 31, (SBA List Fundraising Letter (Aug. 27, 1997)).

³⁴ *See* Marjorie Dannenfelser, *Exotic Fruits of Grace*, CRISIS MAGAZINE, (January 1, 1997), available at <https://www.crisismagazine.com/1997/exotic-fruits-of-grace>.

³⁵ *See* Ex. A, (Amendment of Articles of Incorporation, filed with the State of Minnesota Secretary of State (Apr. 21, 1997)).

³⁶ *See* Ex. G, at 23 (SBA List Candidate Information Letter (July 31, 1999)).

³⁷ *See id.* at 10 (SBA List Tax Exemption Application, Form 1024, Part II(5), (Aug. 7, 1997)).

³⁸ *See id.* at 14 (SBA List Response to Form 1024, Part II(5), (Aug. 7, 1997)).

an affiliated PAC called Susan B. Anthony List Candidate Fund.³⁹ It appears that once formed the Candidate Fund PAC shared the same president, Ms. Abraham, and the same Alexandria, Virginia mailing address with SBA List. None of this was disclosed to the IRS.

Further, in April 1997, less than a month before SBA List was formed, Ms. Abraham signed paperwork to change the name of the original Minnesota-based Susan B. Anthony List, Inc. to “Susan B. Anthony List PAC, Inc.” SBA List did not identify the Susan B. Anthony List PAC as a connected or affiliated organization on its Form 1024, and in fact failed to describe SBA List’s relationship with the PAC in any way.

Fourth, Part II Line 15 of the August 1997 Form 1024 reads:

Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office or to an office in a political organization?

If “Yes,” explain in detail and list the amounts spent or to be spent in each case.⁴⁰

SBA List checked the “No” box, indicating it had not and did not plan to spend money influencing any elections. An SBA List brochure attached to the organization’s Form 1024 application, however, includes quotes from five Republican members of Congress describing how SBA List has helped them and other anti-abortion candidates win elections.⁴¹ Another attachment, an SBA List fundraising letter that also was attached to the organization’s Form 1024 application stated its “pro-life women legislators will host a reception for the Susan B. Anthony List, a 501(c)(4) membership organization dedicated to helping elect pro-life women candidates to the US House and Senate” and explained “[t]he purpose of the reception is to raise much needed funds to help the Susan B. Anthony List prepare for the 1998 Election cycle.”⁴² Therefore, it is clear that contrary to SBA List’s claim on its Form 1024, the organization had spent money and planned to continue spending money to influence elections.

SBA List’s Primary Purpose Appears to be Directly and Indirectly Supporting Political Activity

Ms. Dannenfelser and Ms. Abraham’s re-organization of SBA List from the original Minnesota-registered organization to the Virginia-registered one appears to have been part of a

³⁹ See *id.* at 11 (SBA List Tax Exemption Application, Form 1024, Part II(5), (Aug. 7, 1997)); See Ex. [.] (SBA List Candidate Fund Statement of Organization filed with the Federal Election Commission (Jan. 7, 1998)).

⁴⁰ See Ex. G, at 11 (SBA List Tax Exemption Application, Form 1024, Part II (15), (Aug. 7, 1997)).

⁴¹ See *id.* at 21 (SBA List: Training Pro-Life Women in the Political Arena Brochure, (Aug. 7, 1997)).

⁴² See *id.* at 31, (SBA List Fundraising Letter signed by Jane Abraham (Aug. 27, 1997)).

concerted effort to obtain tax-exempt status under section 501(c)(4). Yet it appears that even after its re-organization the primary purpose of SBA List continued to be engagement in political campaign activity, and that the new organization's activities were not meaningfully different from those of its predecessor, which was organized as a PAC.⁴³

A section 501(c)(4) organization may participate in political activities provided that those activities are not the primary purpose of the organization.⁴⁴ In determining whether a particular activity is political campaign activity, the IRS will look at all relevant facts and circumstances.⁴⁵ Accordingly, some activities that are not regulated under state or federal campaign finance law may be still be considered to be political campaign activities under the Code. Factors that the IRS will considering whether an activity should be treated as political campaign activity include:

- is an individual identified in her capacity as a candidate instead of as a public official;
- does the activity occur during an electoral campaign, targeted at voters in a particular election;
- does it identify a candidate's position on a public policy issue that has been raised during the campaign to distinguish the candidate from others; and,
- is it not part of an ongoing advocacy campaign on public policy issues.⁴⁶

The limitation on political activity is implicit in the statutory requirement that a section 501(c)(4) organization must be "operated exclusively for the promotion of social welfare" and that political activity is not promoting social welfare.⁴⁷ IRS regulations state that "operated exclusively" means "primarily engaged in" but no exact percentage or test has been provided to determine when an organization may be found to operating with a political purpose instead of one for the betterment of social welfare. While "primarily" suggests that political activity must at least be less than 50 percent, it may be an even a lower percentage depending on the particular facts and circumstances of an organization's activities. Moreover, direct political expenditures are only one factor to consider and are likely to be an indication of additional, unreported political activities.

Within the meaning of section 501(c)(4), the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.⁴⁸ The "About" section of the SBA List website, however, describes its mission as explicitly political: "SBA List's mission is to end abortion by electing

⁴³ The original Susan B. Anthony List, Inc. operated as the Susan B. Anthony List PAC, Inc. in the 1994, 1996, and 1998 election cycles. Susan B. Anthony List PAC Inc., Federal Election Commission Filings through 1998, *available at* https://classic.fec.gov/finance/disclosure/metadata/metadata_pac_pty_report_summary.shtml.

⁴⁴ Treas. Reg. § 1.501(c)(4)-1(a)(2).

⁴⁵ Rev. Rul. 2004-6 I.R.B. (Jan. 26, 2004). *See also* Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007) (discussing what is "political" activity under the Code in the context of prohibited activities by a section 501(c)(3) organization).

⁴⁶ Rev. Rul. 2004-6 I.R.B. (Jan. 26, 2004).

⁴⁷ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

⁴⁸ 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii).

national leaders and advocating for laws that save lives, with a special calling to promote pro-life women leaders.”⁴⁹ The SBA List further clarifies: “We combine politics with policy. . .”⁵⁰ Furthermore, immediately below these statements, SBA List includes a video entitled “Susan B. Anthony List Ground Game: Winning,” which opens with a screen crawl reading:

In the last three elections
Susan B. Anthony List has gone on offense to win
a pro-life Senate
a pro-life White House
and a pro-life Supreme Court
through the largest grassroots campaign in the history of the pro-life
movement. . . .⁵¹

The video continues to explain SBA List’s political campaign activities in greater detail, and specifically includes voter canvassing information and calls for members to vote for or against specific named political candidates for public office.⁵² Of particular note, none of these political campaign activities or political mission are attributed to any PAC or other 527 political organization affiliated with SBA List. The website expressly ascribes the political mission and activities to SBA List, a social welfare section 501(c)(4) organization – not a political organization.⁵³

Further, according to figures provided on SBA List’s annual Forms 990, in election years SBA List’s political expenditures frequently exceed 30 percent of the organization’s annual expenditures, and have reached as high as 42 percent. Additionally, these reported amounts likely do not include political activities that are not required to be included on a campaign finance report. Political campaign expenditures that explicitly make up a third or more of an organization’s total expenses, specifically in election years, appear to indicate that engagement in political activity continues to be the organization’s primary purpose.

⁴⁹ About Susan B. Anthony List, (last accessed May 8, 2019), available at <https://www.sba-list.org/about-susan-b-anthony-list>.

⁵⁰ *Id.*

⁵¹ Video available at https://www.youtube.com/watch?v=OAc_P2_lrPg. Published on SBA List’s YouTube account on December 18, 2018.

⁵² *Id.*

⁵³ Treas. Reg. Section 1.501(c)(4)-1(a)(2).

A	B	C	D	E	F
Year	Political expenditures by SBA List as reported on Form 990⁵⁴ (aka SBA List's direct political expenditures)	Transfers by SBA List to other organizations for political expenditures as reported on Form 990⁵⁵ (aka SBA List's indirect political expenditures)	Total political campaign expenditures (Column B plus Column C)	Total expenses reported on Form 990⁵⁶	Political campaign expenditures as a percent of total expenses
2016	\$632,549	\$402,000	\$1,034,549	\$8,114,611	12.75%
2015	\$0	\$500,000	\$500,000	\$6,124,741	8.16%
2014	\$736,834	\$1,575,109	\$2,311,943	\$7,688,369	30.07%
2013	\$34,382	\$247,348	\$281,730	\$3,903,209	7.22%
2012	\$1,994,718	\$426,730	\$2,421,448	\$5,736,973	42.21%
2011	\$4,936	\$10,000	\$14,936	\$3,531,134	0.42%
2010	\$2,239,557	\$4,500	\$2,244,057	\$7,000,004	32.06%

Similarly, while donations to SBA List ebb and flow year to year, the donations *received* by SBA List consistently rise significantly in election years. This may indicate that the message communicated in SBA List's fundraising activities is that donations will support a political purpose. Moreover, the organizations' donors may be much more likely to value and monetarily support SBA List's work during election years, further indicating that political campaign activity continues to be SBA List's primary purpose.

⁵⁴ Amounts directly expended by SBA List and treated as Section 527 (political organization) exempt function activities (*IRS Form 990*, Schedule C, Part I-C, Line 1).

⁵⁵ Amounts contributed to other organizations and treated as Section 527 (political organization) exempt function activities (*IRS Form 990*, Schedule C, Part I-C, Line 2).

⁵⁶ SBA List, Inc. *IRS Form 990* from 2010 through 2016, Part I (18), available at <https://projects.propublica.org/nonprofits/organizations/541850126>.

Year	Election Year	Contributions and Grants	Percentage Change from Prior Year
2016	Yes	\$8,664,615 ⁵⁷	55.7%
2015	No	\$5,563,960 ⁵⁸	-31.3%
2014	Yes	\$8,095,900 ⁵⁹	95.8%
2013	No	\$4,134,096 ⁶⁰	-28.0%
2012	Yes	\$5,740,480 ⁶¹	53.0%
2011	No	\$3,738,891 ⁶²	-45.7%
2010	Yes	\$6,884,825 ⁶³	N/A

In addition to its own direct political expenditures, SBA List has at least four affiliated PACs: (i) Susan B. Anthony List Inc. PAC,⁶⁴ (ii) Susan B. Anthony List Inc. Candidate Fund PAC,⁶⁵ (iii) Women Speak Out PAC,⁶⁶ and (iv) Susan B. Anthony List Action PAC.⁶⁷ Women

⁵⁷ SBA List, Inc., 2016 IRS Form 990, Part I (8), available at <https://projects.propublica.org/nonprofits/organizations/541850126/201712369349301206/IRS990>.

⁵⁸ SBA List, Inc., 2015 IRS Form 990, Part I (8), available at https://projects.propublica.org/nonprofits/display_990/541850126/2017_02_EO%2F54-1850126_990O_201512.

⁵⁹ SBA List, Inc., 2014 IRS Form 990, Part I (8), available at https://projects.propublica.org/nonprofits/display_990/541850126/2015_10_EO%2F54-1850126_990O_201412.

⁶⁰ SBA List, Inc., 2013 IRS Form 990, Part I (8), available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_11_EO%2F54-1850126_990O_201312.

⁶¹ SBA List, Inc., 2012 IRS Form 990, Part I (8), available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_01_EO%2F54-1850126_990O_201212.

⁶² SBA List, Inc., 2011 IRS Form 990, Part I (8), available at https://projects.propublica.org/nonprofits/display_990/541850126/2012_07_EO%2F54-1850126_990O_201112.

⁶³ SBA List, Inc., 2010 IRS Form 990, Part I (8), available at https://projects.propublica.org/nonprofits/display_990/541850126/2011_07_EO%2F54-1850126_990O_201012.

⁶⁴ This PAC is the original Susan B. Anthony List, Inc. that was renamed on April 21, 1997. This PAC is no longer active, and the organization was involuntarily dissolved by the state of Minnesota on December 22, 1999 for failure to submit the required annual renewal reports after December 6, 1995. Susan B. Anthony List PAC Inc., Federal Election Commission Filings through 1998, available at https://classic.fec.gov/finance/disclosure/metadata/metadata_pac_pty_report_summary.shtml; See Ex. C, (Certificate of Involuntary Dissolution filed by the Minnesota Secretary of State, (Dec. 22, 1999)).

⁶⁵ This PAC was created on January 7, 1998. Susan B. Anthony List Inc. Candidate Fund PAC, Statement of Organization, available at <http://docquery.fec.gov/pdf/810/98032582810/98032582810.pdf>.

⁶⁶ This PAC was created on September 19, 2012. Women Speak Out Super PAC, Statement of Organization, available at <http://docquery.fec.gov/pdf/180/12030891180/12030891180.pdf>.

⁶⁷ This PAC was created on October 4, 2018. Susan B. Anthony List Action Super PAC, Statement of Organization, available at <http://docquery.fec.gov/pdf/255/201810049124287255/201810049124287255.pdf>.

Speak Out PAC and Susan B. Anthony List Action PAC are Super PACs⁶⁸ that can receive contributions from SBA List. Susan B. Anthony List Inc. Candidate Fund PAC is a traditional PAC that may contribute to or coordinate directly with parties or candidates but cannot receive contributions directly from SBA List. The Susan B. Anthony List Inc. PAC was dissolved in 1999. There is significant overlap between the directors, officers, and contact information for SBA List and its affiliated PACs, which all share a headquarter. See Appendix 1 for complete listing of organizational overlap between SBA List and its affiliated groups.

SBA List's most active Super PAC, the Women Speak Out PAC, has spent over \$8 million on elections since its formation in 2012.⁶⁹ SBA List's contributions to its Women Speak Out PAC, which total over \$3.6 million, account for almost half of the committee's total political disbursements.⁷⁰

⁶⁸ Letter from the Women Speak Out PAC to the Federal Election Commission, Re: Form 1, Statement of Organization - Unlimited Contributions, *available at* <http://docquery.fec.gov/pdf/180/12030891180/12030891180.pdf>; Susan B. Anthony List Action Super PAC, Statement of Organization at 5 (Oct. 4, 2018) , *available at* <http://docquery.fec.gov/pdf/255/201810049124287255/201810049124287255.pdf>.

⁶⁹ Total Disbursements by Women Speak Out PAC, Federal Election Commission, *available at* <https://www.fec.gov/data/committee/C00530766/?tab=filings&cycle=2012>.

⁷⁰ Total Individual Contributions from Susan B. Anthony List Inc to the Women Speak Out PAC, Federal Election Commission, *available at* https://www.fec.gov/data/individual-contributions/?+two_year_transaction_period=2012&two_year_transaction_period=2018&committee_id=C00530766&contributor_name=SUSAN+B+ANTHONY+LIST&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018.

Two-Year Period Ending:	Total Federal Disbursements by Women Speak Out According to FEC filings	Contributions from SBA List to Women Speak Out According to FEC filings	Contributions from SBA List to Women Speak Out According to IRS filings
Dec. 31, 2018	\$1,461,399.55 ⁷¹	\$87,571.13 ⁷²	Not yet available
Dec. 31, 2016	\$1,913,396.95 ⁷³	\$991,682.43 ⁷⁴	\$900,000 ⁷⁵
Dec. 31, 2014	\$3,810,901.30 ⁷⁶	\$1,836,290.50 ⁷⁷	\$1,819,957 ⁷⁸
Dec. 31, 2012	\$907,077.83 ⁷⁹	\$407,200 ⁸⁰	\$407,300 ⁸¹

SBA List's contributions to its affiliated PACs constitute indirect participation in political campaigns.

Although there are no numerical guidelines as to the precise level of political campaign activity that would be impermissible for a 501(c)(4) organization, the IRS's creation of a

⁷¹ Women Speak Out Super PAC, 2017-2018 Financial Summary, Federal Election Commission, *available at* <https://www.fec.gov/data/committee/C00530766/?cycle=2018>.

⁷² SBA List Inc., contributions to Women Speak Out PAC, Transaction Time Period of 2017-2018, Federal Election Commission, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_period=2018&data_type=processed&committee_id=C00530766&contributor_name=SUSAN+B+ANTHONY+LIST,+INC&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018.

⁷³ Women Speak Out Super PAC, 2015-2016 Financial Summary, Federal Election Commission, *available at* <https://www.fec.gov/data/committee/C00530766/?cycle=2016>.

⁷⁴ SBA List Inc., contributions to Women Speak Out PAC, Transaction Time Period of 2015-2016, Federal Election Commission, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00530766&contributor_name=Susan&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁷⁵ Susan B. Anthony List Inc. contributed \$500,000 in 2015 and \$400,000 in 2016. SBA List, 2015 IRS Form 990, *available at* https://projects.propublica.org/nonprofits/display_990/541850126/2017_02_EO%2F54-1850126_990O_201512; SBA List, Inc., 2016 IRS Form 990, (Schedule C), *available at* <https://projects.propublica.org/nonprofits/organizations/541850126/201712369349301206/IRS990ScheduleC>.

⁷⁶ Women Speak Out Super PAC, 2013-2014 Financial Summary, Federal Election Commission, *available at* <https://www.fec.gov/data/committee/C00530766/?cycle=2014>.

⁷⁷ SBA List Inc., contributions to Women Speak Out PAC, transaction Time Period of 2013-2014, Federal Election Commission, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_period=2014&data_type=processed&committee_id=C00530766&contributor_name=Susan&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

⁷⁸ SBA List Inc. contributed \$244,848 in 2013 and \$1,575,109 in 2014. SBA List 2013 Form 990, *available at* https://projects.propublica.org/nonprofits/display_990/541850126/2014_11_EO%2F54-1850126_990O_201312; SBA List Inc., 2014 IRS Form 990, *available at* https://projects.propublica.org/nonprofits/display_990/541850126/2015_10_EO%2F54-1850126_990O_201412.

streamlined application option available to certain section 501(c)(4) applicant organizations offers some indication of acceptable spending and activity levels. Organizations can receive 501(c)(4) status more quickly if they can certify: (i) they devote 60 percent or more of their spending and time on activities that promote social welfare, and (ii) political campaign intervention consumes 40 percent or less of both their spending and time.⁸² SBA List cannot make such a certification, especially during election years.

In total, SBA List's direct political campaign expenditures, indirect contributions to its PACs, and other associated expenses that make these political expenditures possible, appear so significant that SBA List does not operate primarily for the promotion of social welfare. Instead, a facts and circumstances analysis likely will demonstrate that a political purpose is the primary motivation behind:

- the reason for and manner in which SBA List conducts its activities;
- how SBA List uses its resources;
- the time devoted to activities by SBA List employees and volunteers; and,
- the amount of funds received for and devoted to particular activities.⁸³

SBA List Does Not Accurately Report its Political Campaign Activity to the IRS, the FEC, or Potentially Both

Neither the total political campaign expenditures nor the direct political spending (excluding transfers to other groups) reported on SBA List's Form 990, Schedule Cs match the figures SBA List has reported to the FEC. Neither do the amounts reported on the Schedule Cs match the amounts SBA List has reported to the FEC as direct political campaign spending when it engaged in independent expenditures in its own name.⁸⁴

⁷⁹ Women Speak Out Super PAC, 2011-2012 Financial Summary, Federal Election Commission, *available at* <https://www.fec.gov/data/committee/C00530766/?cycle=2012>

⁸⁰ Susan B. Anthony List Inc. contributions to Women Speak Out PAC, Transaction Time Period of 2011-2012, Federal Election Commission, *available at* https://www.fec.gov/data/receipts/?two_year_transaction_period=2012&data_type=processed&committee_id=C00530766&contributor_name=susan&min_date=01%2F01%2F2011&max_date=12%2F31%2F2012.

⁸¹ Susan B. Anthony List Inc. contributed \$407,300 in 2012. SBA List Inc., 2012 IRS Form 990, *available at* https://projects.propublica.org/nonprofits/display_990/541850126/2014_01_EO%2F54-1850126_990O_201212.

⁸² IRS Fact Sheet 2013-8, *IRS Offers New Streamlined Option to Certain 501(c)(4) Groups Caught in Application Backlog*, June 2013 (FS 2013-8, 06/24/2013).

⁸³ See the factors outlined in Priv. Ltr. Rul. 201224034 (March 21, 2012) (finding that a section 501(c)(4) organization had failed to establish that its primary activity was not political).

⁸⁴ SBA List's website indicates that SBA List is involved not only in federal campaigns, but also in state campaigns.⁸⁴ Thus, the numbers reported to the FEC may not capture all of SBA List's political activities because only federal campaign expenditures are reported to the FEC. In years when SBA List's political expenditures reported to the IRS exceed those reported to the FEC, expenditures on state campaigns may explain a portion of the difference.

A	B		C	D	E
Two-year FEC Reporting Period	Total political expenditures by SBA List (<u>including</u> all transfers to other organizations) as reported on Form 990		Political expenditures by SBA List (<u>excluding</u> any transfers to other organizations) as reported on Form 990	Total Independent Expenditures by SBA List, according to the FEC	Difference in SBA List's direct political expenditures reported to IRS and FEC (column C total minus column D)
2009-2010	2009	(Form left blank) ⁸⁵	(Form left blank) ⁸⁶	\$1,718,841.80 ⁸⁹	\$518,715
	2010	\$2,244,057 ⁸⁷	\$2,239,557 ⁸⁸		
	Total	\$2,244,057	\$2,237,557		
2011-2012	2011	\$14,936 ⁹⁰	\$4,936 ⁹¹	\$1,547,146.81 ⁹²	\$452,507
	2012	\$2,421,448 ⁹³	\$1,994,718 ⁹⁴		
	Total	\$2,436,384	\$1,999,654		

⁸⁵ SBA List Inc., 2009 IRS Form 990, Schedule C, available at https://projects.propublica.org/nonprofits/display_990/541850126/2010_08_EO%2F54-1850126_990O_200912.

⁸⁶ SBA List Inc., 2009 IRS Form 990, Schedule C, available at https://projects.propublica.org/nonprofits/display_990/541850126/2010_08_EO%2F54-1850126_990O_200912.

⁸⁷ SBA List Inc., 2010 IRS Form 990, Schedule C Part I-A (2), available at https://projects.propublica.org/nonprofits/display_990/541850126/2011_07_EO%2F54-1850126_990O_201012.

⁸⁸ SBA List Inc., 2010 IRS Form 990, Schedule C Part I-C (1), available at https://projects.propublica.org/nonprofits/display_990/541850126/2011_07_EO%2F54-1850126_990O_201012.

⁸⁹ SBA List Inc., 2009-2010 Financial Summary, Federal Election Commission, available at <https://www.fec.gov/data/committee/C90011313/?cycle=2010>.

⁹⁰ SBA List Inc., 2011 IRS Form 990, Schedule C Part I-A(2), available at https://projects.propublica.org/nonprofits/display_990/541850126/2012_07_EO%2F54-1850126_990O_201112.

⁹¹ SBA List Inc., 2011 IRS Form 990, Schedule C Part I-C(1), available at https://projects.propublica.org/nonprofits/display_990/541850126/2012_07_EO%2F54-1850126_990O_201112.

⁹² SBA List Inc., 2011-2012 Financial Summary, Federal Election Commission, available at <https://www.fec.gov/data/committee/C90011313/?cycle=2012>.

⁹³ SBA List Inc., 2012 IRS Form 990, Schedule C Part I-A(2), available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_01_EO%2F54-1850126_990O_201212.

⁹⁴ SBA List Inc., 2012 IRS Form 990, Schedule C Part I-C(1), available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_01_EO%2F54-1850126_990O_201212.

2013-2014	2013	\$281,730 ⁹⁵	\$34,382 ⁹⁶	\$469,958.71 ⁹⁷	\$301,257
	2014	\$2,311,943 ⁹⁸	\$736,834 ⁹⁹		
	Total	\$2,593,673	\$771,216		
2015-2016	2015	\$500,000 ¹⁰⁰	\$0 ¹⁰¹	\$756,165.52 ¹⁰²	- \$123,617
	2016	\$1,034,549 ¹⁰³	\$632,549 ¹⁰⁴		
	Total	\$1,534,549	\$632,549		

Even contributions that SBA List purports to have made to specific entities and detailed in its reports to the IRS and FEC do not match. For example, SBA List itemized its contributions to its Women Speak Out PAC on both its Forms 990s and its FEC filings, but the amounts of political

⁹⁵ SBA List Inc., 2013 IRS Form 990, Schedule C Part I-A(2), available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_11_EO%2F54-1850126_990O_201312.

⁹⁶ SBA List Inc., 2013 IRS Form 990, Schedule C Part I-C(1), available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_11_EO%2F54-1850126_990O_201312.

⁹⁷ SBA List Inc., 2013-2014 Financial Summary, Federal Election Commissions, available at <https://www.fec.gov/data/committee/C90011313/?cycle=2014>.

⁹⁸ SBA List Inc., 2014 IRS Form 990, Schedule C Part I-A(2), available at https://projects.propublica.org/nonprofits/display_990/541850126/2015_10_EO%2F54-1850126_990O_201412.

⁹⁹ SBA List Inc., 2014 IRS Form 990, Schedule C Part I-C(1), available at https://projects.propublica.org/nonprofits/display_990/541850126/2015_10_EO%2F54-1850126_990O_201412.

¹⁰⁰ SBA List Inc., 2015 IRS Form 990, Schedule C Part I-A(2), available at https://projects.propublica.org/nonprofits/display_990/541850126/2017_02_EO%2F54-1850126_990O_201512.

¹⁰¹ SBA List Inc., 2015 IRS Form 990, Schedule C Part I-C(1), available at https://projects.propublica.org/nonprofits/display_990/541850126/2017_02_EO%2F54-1850126_990O_201512.

¹⁰² SBA List Inc., 2015-2016 Financial Summary, Federal Election Commission, available at <https://www.fec.gov/data/committee/C90011313/?cycle=2016>.

¹⁰³ SBA List Inc., 2016 IRS Form 990, Schedule C Part I-A(2), available at <https://projects.propublica.org/nonprofits/organizations/541850126/201712369349301206/IRS990ScheduleC>.

¹⁰⁴ SBA List Inc., 2016 IRS Form 990, Schedule C Part I-C(1), available at <https://projects.propublica.org/nonprofits/organizations/541850126/201712369349301206/IRS990ScheduleC>.

expenditures reported to the FEC do not equal the figures reported to the IRS, as summarized in the following table:

Year	Contributions from SBA List to Women Speak Out PAC on Form 990, Schedule C¹⁰⁵	Contributions from SBA List to Women Speak Out PAC, as reported to the FEC	Discrepancy
2012	\$407,300	\$407,200 ¹⁰⁶	\$100
2013	\$244,848	\$0 ¹⁰⁷	\$244,848
2014	\$1,575,109	\$1,835,791 ¹⁰⁸	-\$260,682
2015	\$500,000	\$500,000 ¹⁰⁹	\$0
2016	\$400,000	\$491,682 ¹¹⁰	-\$91,682

Under applicable federal income tax reporting requirements, all “direct and indirect political campaign activities” must be reported on an organization’s Form 990, Schedule C.¹¹¹ Under applicable FEC reporting requirements, whenever a person, inclusive of organizations but

¹⁰⁵ SBA List Inc., 2012-2016 IRS Form 990, Schedule C, Part I-C(5), available at <https://projects.propublica.org/nonprofits/organizations/541850126>

¹⁰⁶ Women Speak Out PAC, 2012 Individual Contributions, Federal Election Commission, available at https://www.fec.gov/data/individual-contributions/?+two_year_transaction_period=2012&two_year_transaction_period=2012&committee_id=C00530766&contributor_name=SUSAN+B+ANTHONY+LIST&min_date=01%2F01%2F2012&max_date=12%2F31%2F2012.

¹⁰⁷ According to the Federal Election Commission database, Susan B. Anthony List Inc did not contribute to Women Speak Out PAC in 2013. Women Speak Out PAC, 2014 Individual Contributions, Federal Election Commission, available at https://www.fec.gov/data/individual-contributions/?+two_year_transaction_period=2012&two_year_transaction_period=2014&committee_id=C00530766&contributor_name=SUSAN+B+ANTHONY+LIST&min_date=01%2F01%2F2014&max_date=12%2F31%2F2014.

¹⁰⁸ Women Speak Out PAC, 2014 Individual Contributions, Federal Election Commission, available at https://www.fec.gov/data/individual-contributions/?+two_year_transaction_period=2012&two_year_transaction_period=2014&committee_id=C00530766&contributor_name=SUSAN+B+ANTHONY+LIST&min_date=01%2F01%2F2014&max_date=12%2F31%2F2014.

¹⁰⁹ Women Speak Out PAC, 2015 Individual Contributions, Federal Election Commission, available at https://www.fec.gov/data/individual-contributions/?+two_year_transaction_period=2012&two_year_transaction_period=2016&committee_id=C00530766&contributor_name=SUSAN+B+ANTHONY+LIST&min_date=01%2F01%2F2015&max_date=12%2F31%2F2015.

excluding political committees, makes independent expenditures aggregating over \$250 with respect to a given election in a calendar year, the entity is required to submit FEC Form 5 and report, among other things, the identity of the person to whom the expenditure was made along with the amount, date, and purpose of each expenditure.¹¹² Given the parallel requirements to report political campaign expenditures to both the IRS and the FEC, the amount of political spending reported by SBA List to the two agencies should have been the same.

SBA List Has Failed to Properly Disclose its Business Transactions with Certain Interested Persons in Violation of Prohibitions on Private Inurement

Section 501(c)(4) organizations' net earnings cannot inure to the benefit of a private shareholder or individual.¹¹³ To ensure no private inurement, organizations are required to disclose transactions with certain covered individuals on their Form 990s, including: (a) current or former officers, directors, trustees, or key employees, (b) family members of any of the foregoing, or (c) entities in which any of the foregoing serve as officers, directors, trustees, or direct or indirect owners (collectively, "Interested Persons").¹¹⁴

Prior to 2013, SBA List annually disclosed one series of business transactions: annual payments ranging from \$5,000 to \$96,305 made by SBA List to Capital City Partners, a for-profit public affairs company partially owned by SBA List's then-serving treasurer, Francis "Frank" Cannon.¹¹⁵ Since 2012, however, SBA List has answered "no" in response to Form 990, Part IV,

¹¹⁰ Women Speak Out PAC, 2016 Individual Contributions, Federal Election Commission, *available at* https://www.fec.gov/data/individual-contributions/?+two_year_transaction_period=2012&two_year_transaction_period=2016&committee_id=C00530766&contributor_name=SUSAN+B+ANTHONY+LIST&min_date=01%2F01%2F2016&max_date=12%2F31%2F2016.

¹¹¹ Instructions for schedule C (Form 990 or 990-EZ), Internal Revenue Service, 2018l *available at* <https://www.irs.gov/pub/irs-pdf/i990sc.pdf>.

¹¹² Instructions for Preparing FEC Form 5 (Report of Independent Expenditures Made and Contributions Received to be Used by Persons Other Than Political Committees), Federal Election Commission, (Revised Sept. 2013), *available at* <https://www.fec.gov/resources/cms-content/documents/fecfrm5i.pdf>.

¹¹³ Code § 501(c)(4)(B). This prohibition on private inurement effectively represents an extension of the Code Section 501(c)(3) private inurement rule to Code Section 501(c)(4) organizations. Committee Report for House Report No. 104-506 (P.L. 104-168), pp. 52-53 ("To ensure that the advantages of tax-exempt status ultimately benefit the community and not private individuals, the bill extends the present-law section 501(c)(3) private inurement prohibition to nonprofit organizations described in section 501(c)(4) and provides for intermediate sanctions that may be imposed when nonprofit organizations described in section 501(c)(3) or 501(c)(4) engage in transactions with certain insiders that result in private inurement. The bill also enhances the oversight and public accountability of nonprofit organizations through additional reporting of information by nonprofit organizations to the Internal Revenue Service (IRS) and increased public access to documents filed by such organizations with the IRS.")

¹¹⁴ See IRS Form 990, Part IV, Line 28; *see also* IRS Form 990, Schedule L.

¹¹⁵ The disclosed transactions were as follows:

- In 2012, SBA List paid \$196,305 to Capital City Partners for consulting services;
- In 2011, SBA List paid \$145,096 to Capital City Partners for consulting services;

Line 28(a), (b), and (c) and has not attached a Schedule L disclosing any such business transactions.

In fact, SBA List should have indicated it had disclosures to report and should have attached Schedule L disclosures. SBA List engaged in, but failed to report, the following business transactions:

1. On its 2017 Form 990, SBA failed to disclose that it had hired Political Social Media, LLC (doing business as “uCampaign”) to develop its official mobile app called “Life Impact.” SBA List director Sean Fieler provided the startup capital for uCampaign’s creation in 2014 and may still own a portion of the company.¹¹⁶
2. On its 2017 Form 990—which spans from July 2017 through June 2018—SBA failed to disclose that it had retained Direct Technology Solutions (“DTS”), owned by SBA List Treasurer Robert J. Kania II,¹¹⁷ for IT consulting services around June of 2018.¹¹⁸

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- In 2010, SBA List paid \$132,856 to Capital City Partners for consulting services;
 - In 2009, SBA List paid \$139,263 to Capital City Partners for consulting services;
 - In 2008, SBA List paid \$5,000 to Capital City Partners for consulting services.

SBA List Inc., 2008-2012 IRS Form 990, Schedule L, Part IV, available at <https://projects.propublica.org/nonprofits/organizations/541850126>. Aside from the business transactions with Capital City Partners from 2008 through 2011, SBA List did not disclose any other business transactions on its Form 990s for those years. *Id.*

¹¹⁶ Natasha Singer and Nicholas Confessore, *Republicans Find a Facebook Workaround: Their Own Apps*, THE NEW YORK TIMES, Oct. 20, 2018, available at <https://www.nytimes.com/2018/10/20/technology/politics-apps-conservative-republican.html>. Sean Fieler manages his wealth through a network of investment funds, primarily Mason Hill Advisors, Equinox Partners, Kuroto Fund International, and Nehemiah Investments. An employee of Nehemiah Investments, created the uCampaignapp.com website using the email address jpaff@nehemiahinvestments.com. See Ex. I, (UCampaignApp.com, Domain Report, DomainTools, Apr. 12, 2019).

¹¹⁷ Louie Torres, *Investor Claims He’s Owed Returns from Direct Technology Solutions*, PENN RECORD, Dec. 19, 2016, available at <https://pennrecord.com/stories/511057009-investor-claims-he-s-owed-returns-from-direct-technology-solutions>.

¹¹⁸ See, Ex. J, at 8, (*Wijesinha v. Susan B. Anthony List, Inc.*, Case No. 1:18-cv-22880-JEM, Doc. 22, Defendant Susan B. Anthony List, Inc.’s Motion to Dismiss (Oct. 26, 2018)). Mr. Kania is the subject of a campaign finance complaint in Pennsylvania filed by Campaign for Accountability. Letter from Alice Huling, Counsel, Campaign for Accountability, to Stephen Zappala, Allegheny County District Attorney, and Allegheny County Board of Elections (Apr. 8, 2019), available at <https://campaignforaccountability.org/wp-content/uploads/2019/04/Kania-Campaign-Finance-Complaint-4-8-19.pdf>. Shortly after the complaint was filed, Pennsylvania Governor Tom Wolf removed Mr. Kania from his position on the Allegheny County Port Authority Board. See Ed Blazina, *After Transit Group’s Urging, Gov. Wolf Replaces Port Authority Board Member*, PITTSBURGH POST-GAZETTE, April 11, 2019, available at <https://www.post-gazette.com/news/transportation/2019/04/11/Pittsburghers-for-Public-Transit-group-Gov-Wolf-replace-Port-Authority-board-member-robert-kania/stories/201904110081>. On April 17, 2019 CfA called on the Susan B. Anthony List to remove Mr. Kania from their Board of Directors. Letter from Alice Huling, Counsel, Campaign for Accountability, to Marjorie Dannenfelser, President, Susan B. Anthony List, Inc., *et al.* (Apr. 17, 2019), available at <https://campaignforaccountability.org/wp-content/uploads/2019/04/CfA-Letter-SBA-List-Kania-Board-4-17-19.pdf>.

3. On its 2013, 2014, 2015, 2016, and 2017 Form 990s, SBA List failed to disclose it has retained Hewell Events Group, LLC to plan its annual galas since 2013.¹¹⁹ The Event Manager of Hewell Events Group's four-person team is Natalie Valentine.¹²⁰ Ms. Valentine's husband, William Valentine, is SBA List's Vice President of Policy¹²¹ (formerly the Director of Government Affairs)¹²² and is one of the organization's highest compensated employees.¹²³ Ms. Valentine herself also serves as SBA List Special Projects Coordinator and is the Development Coordinator for the Charlotte Lozier Institute, SBA List's research and education arm.¹²⁴

The penalty for private inurement may include fines imposed under Code 4958¹²⁵ and/or revocation of the organization's tax-exempt status.¹²⁶ The IRS should investigate whether SBA List failed to properly disclose business transactions involving certain persons on its Forms 990 in order to avoid alerting the agency to potential private inurement and/or excess benefit transactions that could lead to revocation of SBA List's tax-exempt status or excise taxes, or both.

SBA List Appears to Have Inaccurately Described the Working Arrangements and Hours of an Organization Insider

Francis Cannon (who appears as "Frank" on certain Forms 990 and other documents) served as SBA List's Treasurer from 2007 through the beginning of 2012 and, according to the 990s, was only compensated for his time in 2012, and then only received \$12,000.¹²⁷ During the

¹¹⁹ IRS Form 990 or 990-EZ Schedule L Part IV details Business Transactions with Interested Persons. Susan B. Anthony List Inc. neglected to complete a Schedule L portion from 2013-2016. SBA List Inc., 2013 – 2016 IRS Form 990s, available at <https://projects.propublica.org/nonprofits/organizations/541850126>; Patrick Gavin, Events Chief Fights Drab D.C. Parties, POLITICO, August 2, 2013, available at <https://www.politico.com/story/2013/08/events-chief-fights-drab-dc-parties-095116>.

¹²⁰ Hewell Events Group, Our Team webpage, available at <https://www.hewellevents.com/our-team> (last accessed May 7, 2019).

¹²¹ Billy Valentine Employee Webpage, Susan B. Anthony List, available at <https://www.sba-list.org/billy-valentine> (last accessed May 7, 2019a).

¹²² SBA List Inc., 2016 IRS Form 990, Part VII, Section A, available at <https://projects.propublica.org/nonprofits/organizations/541850126/201712369349301206/IRS990>.

¹²³ *Id.*

¹²⁴ See Natalie Valentine Employee Bio, Susan B. Anthony List, available at <https://www.sba-list.org/natalie-valentine-2> (last accessed May 7, 2019).

¹²⁵ The penalty excise taxes are imposed on the "disqualified persons" of the social welfare organization, as defined in Code Section 4958(f)(1), as well as the organization's managers who knowingly participated in the "excess benefit transaction," as defined in Code Section 4958(c), unless their participation was not willful and had reasonable cause. See 26 U.S.C. § 4958.

¹²⁶ See 26 C.F.R. § 1.501(c)(3)(1)-1(f)(2)(ii).

¹²⁷ SBA List Inc., 2007 IRS Form 990, Part V-A, filed Aug. 13, 2008, available at https://projects.propublica.org/nonprofits/display_990/541850126/2008_09_EO%2F54-1850126_990O_200712; SBA List Inc., 2008 IRS Form 990, Part VII, A(1a)(A), filed Aug. 14, 2009, available at https://projects.propublica.org/nonprofits/display_990/541850126/2009_09_EO%2F54-1850126_990O_200812; SBA List Inc., 2009 IRS Form 990, Part VII, A(1a)(A), filed June 24, 2010, available at https://projects.propublica.org/nonprofits/display_990/541850126/2010_08_EO%2F54-1850126_990O_200912;

same period, Mr. Cannon was also a partial owner of Capital City Partners, a for-profit public affairs consulting company that SBA List paid for consulting services up until 2012.¹²⁸ Since 2012, SBA List has paid Mr. Cannon an annual compensation that has grown from \$108,600 to \$203,974 in 2017, purportedly for performing full-time political consulting work.¹²⁹ Mr. Cannon's annual salary since giving up his position as treasurer has largely fallen within the same ranges as the consulting payments SBA List made to Capital City Partners pre-retirement. SBA List reports that its current Treasurer, Robert Kania, does not receive a salary.¹³⁰

In addition to his current full-time consulting for SBA List, Mr. Cannon is President of both American Principles Project ("APP"),¹³¹ another 501(c)(4) organization, and the related American Principles Project Foundation ("APPF"),¹³² a 501(c)(3) organization. APP/APPF and SBA List have their headquarters in neighboring suites on the same floor of the same building. As shown below, Forms 990 filed by SBA List, APP, and APPF, respectively, suggest that Mr. Cannon works full time for both the SBA List and the APP/APPF groups, while also conducting private businesses in his spare time:

SBA List Inc., 2010 IRS Form 990, Part VII, A(1a)(A), filed June 13, 2011, available at https://projects.propublica.org/nonprofits/display_990/541850126/2011_07_EO%2F54-1850126_990O_201012; SBA List Inc., 2011 IRS Form 990, Part VII, A(1a)(A), filed June 27, 2012, available at https://projects.propublica.org/nonprofits/display_990/541850126/2012_07_EO%2F54-1850126_990O_201112; SBA List Inc., 2012 IRS Form 990, Part VII, A(1a)(A), filed July 16, 2013, available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_01_EO%2F54-1850126_990O_201212.

¹²⁸ See, *supra* note 18.

¹²⁹ Mr. Cannon purportedly works for SBA List 40 hours per week. See SBA List 2017 Form 990, Part VII, A(1a)(B), filed Nov. 15, 2018, available at <https://projects.propublica.org/nonprofits/organizations/541850126/201843199349300809/IRS990>.

¹³⁰ *Id.*

¹³¹ APP, 2017 IRS Form 990, Part VII, A(1a)(A), filed Oct. 11, 2018, available at <https://projects.propublica.org/nonprofits/organizations/264613397/201802849349300610/IRS990>.

¹³² APPF, 2017 IRS Form 990, Part VII, A(1a)(A), filed Oct. 11, 2018, available at <https://projects.propublica.org/nonprofits/organizations/264442148/201812849349300611/IRS990>.

Year	Hours worked per week				Reportable compensation			
	SBA List	APP	APPF	Total hours worked per week	SBA List	APP	APPF	Total Compensation
2012 ¹³³	50	10	15	65	\$0	\$0	\$0	\$0
2013 ¹³⁴	0	20	20	40	\$108,600	\$105,000	\$75,000	\$288,600
2014 ¹³⁵	40	20	20	80	\$134,600	\$174,059	\$0	\$308,659
2015 ¹³⁶	40	35	5	80	\$162,550	\$170,108	\$0	\$332,658
2016 ¹³⁷	40	35	5	80	\$160,200	\$171,264	\$0	\$331,464
2017 ¹³⁸	40	20	5	65	\$203,974	\$172,097	\$0	\$375,471

¹³³ The 2012 Form 990 for APP and APPF do not agree on Mr. Cannon's hours worked. In 2012, the APP Form 990 states that Mr. Cannon worked 10 hours per week for APP and 0 hours per week for any related organizations. However, in 2012, the APPF Form 990 states that Mr. Cannon worked 15 hours per week for APPF and 0 hours per week for any related organizations. SBA List Inc., 2012 IRS Form 990, filed July 16, 2013, available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_01_EO%2F54-1850126_990O_201212;

American Principles in Action, 2012 IRS Form 990, filed Oct. 29, 2013, available at https://projects.propublica.org/nonprofits/display_990/264613397/2013_10_EO%2F26-4613397_990O_201212;

American Principles Project, 2012 IRS Form 990, filed Oct. 1, 2013, available at https://projects.propublica.org/nonprofits/display_990/264442148/2013_10_EO%2F26-4442148_990_201212.

¹³⁴ In 2013, SBA List reportedly paid Mr. Cannon \$108,600 for working zero hours per week. SBA List Inc., 2013 IRS Form 990, available at https://projects.propublica.org/nonprofits/display_990/541850126/2014_11_EO%2F54-1850126_990O_201312; American Principles in Action, 2013 IRS Form 990, filed Nov. 13, 2014, available at https://projects.propublica.org/nonprofits/display_990/264613397/2014_12_EO%2F26-4613397_990O_201312;

American Principles Project, 2013 IRS Form 990, filed Nov. 12, 2014, available at https://projects.propublica.org/nonprofits/display_990/264442148/2014_12_EO%2F26-4442148_990_201312.

¹³⁵ SBA List Inc., Inc., 2014 IRS Form 990, available at https://projects.propublica.org/nonprofits/display_990/541850126/2015_10_EO%2F54-1850126_990O_201412; American Principles in Action, 2014 IRS Form 990, filed Aug. 6, 2015 available at https://projects.propublica.org/nonprofits/display_990/264613397/2015_09_EO%2F26-4613397_990O_201412; American Principles Project, 2014 IRS Form 990, filed Aug. 6, 2015, available at https://projects.propublica.org/nonprofits/display_990/264442148/2015_09_EO%2F26-4442148_990_201412.

¹³⁶ SBA List Inc., 2015 IRS Form 990, available at https://projects.propublica.org/nonprofits/display_990/541850126/2017_02_EO%2F54-1850126_990O_201512; American Principles Project, 2015 IRS Form 990, filed Aug. 12, 2016, available at https://projects.propublica.org/nonprofits/display_990/264613397/2016_12_EO%2F26-4613397_990O_201512; American Principles Project Foundation, 2015 IRS Form 990, filed Aug. 12, 2016, available at https://projects.propublica.org/nonprofits/display_990/264442148/2016_12_EO%2F26-4442148_990_201512

¹³⁷ SBA List Inc., 2016 IRS Form 990, available at <https://projects.propublica.org/nonprofits/organizations/541850126/201712369349301206/IRS990ScheduleC>;

American Principles Project, 2016 IRS Form 990, filed Sept. 5, 2017, available at <https://projects.propublica.org/nonprofits/organizations/264613397/201742689349300104/IRS990>; American Principles Project Foundation, 2016 IRS Form 990, filed Sept. 5, 2017, available at <https://projects.propublica.org/nonprofits/organizations/264442148/201702689349300105/IRS990>.

¹³⁸ SBA List Inc., 2017 IRS Form 990, available at <https://projects.propublica.org/nonprofits/organizations/541850126/201843199349300809/IRS990>; American Principles Project, 2017 IRS Form 990, filed Oct. 11, 2018, available at

It is theoretically possible that Mr. Cannon has provided 80 hours of service per week collectively to SBA List, APP, and APPF, as the organizations report, given that there are 168 hours in a week, but it is highly unlikely. The IRS should investigate whether Mr. Cannon did, indeed, work the reported hours and whether his compensation was reasonable, or whether he was paid for some other services.

Payment of unreasonable amounts of compensation can constitute private inurement, private benefit, and/or an excess benefit transaction and, as discussed above, under section 4958, a 501(c)(4) organization may be subject to intermediate sanctions on excess benefit transactions or incur revocation of its tax-exempt status for an unlawful private inurement.¹³⁹ In general, “reasonable compensation” is the amount that would be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances factoring in all of applicable facts and circumstances.¹⁴⁰ Further, provision of compensation or other benefits, even if they are modest, is not reasonable compensation where no services are performed.¹⁴¹ Thus, if Mr. Cannon’s compensation was based on reported hours that he did not actually work his compensation may be per se unreasonable.

*SBA List has Entered Into Contracts with Third Party
Professional Fundraisers with Unduly Generous Terms*

SBA List consistently has entered into fundraising contracts that have resulted in remarkably small percentages of funds raised going to the group’s coffers.

- In 2009, SBA List entered into a fundraising contract with MDS Communications Corporation, allowing MDS to retain 90 percent of all funds raised;¹⁴²
- In 2012, SBA List entered into a fundraising contract with Confluent Impact Communications guaranteeing SBA List only 1 percent of the total gross receipts;¹⁴³
- In 2017, SBA List entered into a fundraising contract with Capitol Resources, Inc., also known as Campaign Headquarters, guaranteeing SBA List a minimum of 1 percent of the gross revenues.¹⁴⁴

<https://projects.propublica.org/nonprofits/organizations/264613397/201802849349300610/IRS990>; American Principles Project Foundation, 2017 IRS Form 990, filed Oct. 11, 2018, available at <https://projects.propublica.org/nonprofits/organizations/264442148/201812849349300611/IRS990>.

¹³⁹ TD 8978, Taxes on Excess Benefit Transactions, Preamble to Final Treasury Regulations under Code Section 4958 (Jan. 22, 2002).

¹⁴⁰ Treas. Reg. Section 53.4958-4(b)(1)(ii).

¹⁴¹ *Canada v. Comm’r*, 82 TC 973 (1984).

¹⁴² See Ex. K, at 8, (Susan B. Anthony List, and MDS Communications Corporation Contract Services Agreement, North Carolina Department of The Secretary of State, (signed Mar. 19, 2009)).

¹⁴³ See Ex. L, at 2, (Susan B. Anthony List and Confluent Impact Communications, LLC, Solicitor Contract Checklist, North Carolina Department of The Secretary of State, (signed May 30, 2012)).

¹⁴⁴ See Ex. M, at 7, (Susan B. Anthony List, and Capitol Resources, Inc., Solicitor Contract Checklist, North Carolina Department of The Secretary of State Solicitor, (signed Jan. 5, 2017)).

It appears that not infrequently SBA List collects close to the minimum permitted under its contracts with third-party fundraisers. In 2017, SBA List received only \$3,795.93 out of \$52,252.50 raised by Capitol Resources, Inc., just 7.26 percent of the total amount raised in its name.¹⁴⁵ Even more egregious, in 2016 SBA List received only \$2,125.75 out of \$109,022.45 raised by Capitol Resources, Inc., just 1.95 percent of the fundraising total.¹⁴⁶ Capitol Resources appears to do business as Campaign Headquarters, and claims to be the “Best Conservative Call Center in America.”¹⁴⁷

In 2016 and 2017 SBA List also contracted with InfoCision, Inc., an Ohio telemarketing company that got its start in Christian fundraising.¹⁴⁸ In 2016, InfoCision raised only \$931 for SBA List while accumulating \$17,057 in expenses. In 2017 InfoCision pocketed \$10,451 of the total \$11,083 that the company raised purportedly on SBA List’s behalf, leaving SBA List with only \$632.¹⁴⁹ In total, SBA List kept little more than 5 percent of the money InfoCision raised on its behalf in 2016 and 2017. Furthermore, SBA List chose to use InfoCision despite the company having paid \$75,000 to settle an Ohio Attorney General investigation focused on, among other issues, the company’s failure to disclose to consumers the percentage of the money it raised that actually went to the charities for which it fundraised.¹⁵⁰

¹⁴⁵ See Ex. N, (Capitol Resources, Inc., North Carolina Solicitation Campaign Financial Report, Final Accounting, (filed May 18, 2018)). In accordance with North Carolina law, Capital Resources President Nicole Schlinger signed and filed the required Solicitation Campaign Financial Report with the Charitable Solicitation Licensing Division. *Id.*; see also, Nicole Schlinger biography, Campaign HQ, (last accessed May 27, 2019), available at <https://www.campaign-headquarters.com/pages/nicole-schlinger.aspx>. The fundraising returns submitted by Ms. Schlinger to the North Carolina Charitable Solicitation Licensing Division differ drastically from the fundraising returns submitted to the IRS by SBA List, which indicate that the organization collected \$40,623 in fundraising from Capitol Resources. See SBA List Inc., 2017 IRS Form 990, available at <https://projects.propublica.org/nonprofits/organizations/541850126/201843199349300809/IRS990>.

¹⁴⁶ See Ex. O (Capitol Resources Inc., North Carolina Solicitation Campaign Financial Report, Final Accounting, (filed Apr. 3, 2017)). In accordance with North Carolina law, Capital Resources President Nicole Schlinger signed and filed the required Solicitation Campaign Financial Report with the Charitable Solicitation Licensing Division. *Id.*; see also, Nicole Schlinger biography, Campaign HQ, (last accessed May 27, 2019), available at <https://www.campaign-headquarters.com/pages/nicole-schlinger.aspx>. The fundraising returns submitted by Ms. Schlinger to the North Carolina Charitable Solicitation Licensing Division differ drastically from the gross receipts and fundraising returns submitted to the IRS by SBA List, which indicate that Capital Resources’ fundraising efforts raised \$115,801 in gross receipts and that SBA List collected \$100,195 of the funds raised. See SBA List Inc., 2016 IRS Form 990, available at <https://projects.propublica.org/nonprofits/organizations/541850126/201712369349301206/IRS990ScheduleC>.

¹⁴⁷ Campaign Headquarters, Home Page, (last accessed May 9, 2019), available at <https://www.campaign-headquarters.com/-services>.

¹⁴⁸ InfoCision: Your Trusted Brand Ambassadors, We Are InfoCision, (last accessed May 9, 2019), available at <http://www.infocision.com/about-us/-about-us-intro>.

¹⁴⁹ SBA List Inc., 2017 IRS Form 990, Schedule G, Part I (2b), available at <https://projects.propublica.org/nonprofits/organizations/541850126/201843199349300809/IRS990ScheduleG>.

¹⁵⁰ Press Release, Attorney General DeWine Announces Settlement Agreement with Professional Solicitor Company InfoCision, OFFICE OF ATTORNEY GENERAL OF OHIO, Apr. 20, 2012, available at <https://www.ohioattorneygeneral.gov/Media/News-Releases/April-2012/Attorney-General-DeWine-Announces-Settlement-Agree>; *In Re: InfoCision Management Corporations*, Case No. 12MS000289, Assurance of

Relatedly, in 2014, InfoCision paid \$1.7 million to settle a class action lawsuit alleging it had misrepresented, among other things, the percentage of the donations it raised that was passed on to charities.¹⁵¹ More recently, in 2018 InfoCision paid a \$250,000 civil fine to settle an FTC investigation into its misleading telemarketing practices.¹⁵²

In general, if a 501(c)(4) organization pays a non-exempt individual or entity a price for goods or services that exceeds the fair market value of those goods or services, then it is engaged in impermissible private inurement, private benefit, and/or excess business benefit transactions.¹⁵³ Typically, when an organization purchases assets from an independent third party, a presumption exists that the purchase price, presumably arrived at through negotiations, represents fair market value.¹⁵⁴ However, when there is a close relationship between the two at the time of sale, there is no such presumption because the elements of an arm's length transaction are not present.¹⁵⁵ Given that SBA List has collected only a tiny fraction of the amount solicited by its fundraisers, it appears their fundraisers are receiving an impermissible private benefit. If any of these fundraisers are insiders of SBA List, then contracts that excessively benefit them and not SBA List may constitute excess benefit transactions or impermissible private inurement and could lead to the revocation of SBA List's tax-exempt status.¹⁵⁶

Discontinuance (Apr. 17, 2012), available at <https://www.ohioattorneygeneral.gov/Media/News-Releases/April-2012/Attorney-General-DeWine-Announces-Settlement-Agree/InfoCision-Assurance.aspx>.

¹⁵¹ Jim Mackinnon, *InfoCision Settles Class-Action Lawsuit Over Charity Telemarketing*, AKRON BEACON JOURNAL (Jul. 22, 2014), available at <https://www.ohio.com/akron/business/infocision-settles-class-action-lawsuit-over-charity-telemarketing>.

¹⁵² Eric Heisig, *InfoCision Agrees to Pay \$250,000 to Settle Investigation Over Misleading Telemarketing Practices*, CLEVELAND.COM (Jan. 10, 2018), available at <https://www.cleveland.com/court-justice/2018/01/infocision-agrees-to-pay-25000.html>.

¹⁵³ See e.g. *Anclote Psychiatric Center Inc.*, TC Memo 1998-273 (sustaining the revocation of a hospital's tax-exempt status on the grounds that an asset sale to a for-profit corporation, whose shareholders were directors of both the corporation and the hospital, for less than fair market value resulted in private inurement); *Bob Jones University Museum and Gallery, Inc.*, TC Memo 1996-247 (explaining that "the principal inquiry in determining whether rental arrangements create private benefit or inurement is whether the rental payments are excessive"); see also Treas. Reg. §§ 53.4958-4(a)(1), 53.4958-4(b)(1)(i). Though SBA List is a 501(c)(4) organization, the laws prohibiting its engagement in private inurement are comparable to those governing 501(c)(3) organizations. See, *supra*, n. 113.

¹⁵⁴ Rev. Rul. 76-91, 1976-1 CB 149.

¹⁵⁵ *Id.*

¹⁵⁶ *United Cancer Council, Inc. v. Comm'r*, 109 TC 326 (Dec. 2, 1997), *rev'd and rem'd on other issue* 165 F.2d 1173 (7th Cir. Feb. 10, 1999).

Conclusion

In summary, CfA asks the IRS to investigate whether SBA List has:

1. Made material misrepresentations and omissions on its application for 501(c)(4) tax-exempt status;
2. Had as its true primary purpose participating directly and indirectly in political campaigns, rather than promoting social welfare;
3. Failed to accurately report its political campaign expenditures to the IRS, the FEC, or both;
4. Failed to report business transactions with interested persons as required on the Form 990, Schedule L, which may constitute private inurement;
5. Inaccurately reported the amount of time worked by a certain highly compensated former officer, which may constitute an improper private inurement; and
6. Entered into contracts with third-party professional fundraisers that were not reasonably beneficial to SBA List and may constitute improper private benefit to those fundraisers.

Tax-exempt status is a privilege and the IRS has the responsibility of ensuring that organizations comply with all applicable tax laws. Therefore, CfA looks forward to your prompt investigation of what appears to be SBA List's pattern of legal violations.

Sincerely,



Alice C.C. Huling
Counsel

Enclosure:
Form 13909

Appendix 1

Party and Gender of SBA List Endorsed Candidates by Year

2018 Election Cycle		
<i>SBA List Endorsed Candidate¹</i>	<i>Party</i>	<i>Gender</i>
1. Alex Mooney	Republican	Male
2. Andy Barr	Republican	Male
3. Ann Wagner	Republican	Female
4. Barbara Cegavske	Republican	Female
5. Barbara Comstock	Republican	Female
6. Ben Cline	Republican	Male
7. Bill Schuette	Republican	Male
8. Brian Kemp	Republican	Male
9. Brian Mast	Republican	Male
10. Candius Stearns	Republican	Female
11. Carol Miller	Republican	Female
12. Cathy McMorris Rodgers	Republican	Female
13. Chris Smith	Republican	Male
14. Cindy Hyde-Smith	Republican	Female
15. Claudia Tenney	Republican	Female
16. Dan Lipinski	Democrat	Male
17. Danny Tarkanian	Republican	Male
18. Dave Brat	Republican	Male
19. David Schweikert	Republican	Male
20. David Young	Republican	Male
21. Dean Heller	Republican	Male
22. Deb Fischer	Republican	Female
23. Debbie Lasko	Republican	Female
24. Denver Riggleman	Republican	Male
25. Diane Harkey	Republican	Female
26. Dino Russi	Republican	Male
27. Don Bacon	Republican	Male
28. Don Young	Republican	Male
29. Galvin Clarkson	Republican	Male
30. Greg Gianforte	Republican	Male
31. Greg Pence	Republican	Male
32. Guy Reschenhaler	Republican	Male
33. Henry McMaster	Republican	Male
34. Jackie Walorski	Republican	Female
35. Jake LaTurner	Republican	Male
36. Jamie Beutler	Republican	Female
37. Jay Webber	Republican	Male
38. Jim Banks	Republican	Male

¹ SBA List 2018 Election Report, available at <https://www.sba-list.org/2018-election-report>.

39. Jim Jordan	Republican	Male
40. Jim Renacci	Republican	Male
41. John Carter	Republican	Male
42. John Culberson	Republican	Male
43. John James	Republican	Male
44. Jon Husted	Republican	Male
45. Josh Hawley	Republican	Male
46. Karen Handel	Republican	Female
47. Karin Housley	Republican	Female
48. Katie Arrington	Republican	Female
49. Kay Ivey	Republican	Female
50. Keith Rothfus	Republican	Male
51. Kelly Armstrong	Republican	Female
52. Kevin Cramer	Republican	Male
53. Kim Reynolds	Republican	Female
54. Kimberlin Brown	Republican	Female
55. Kimberly Yee	Republican	Female
56. Kristi Noem	Republican	Female
57. Larry Buchson	Republican	Male
58. Leah Vukmir	Republican	Female
59. Lena Epstein	Republican	Female
60. Leslie Rutledge	Republican	Female
61. Lisa Posthumus Lyons	Republican	Female
62. Liz Cheney	Republican	Female
63. Maria Elvira Salazar	Republican	Female
64. Marsha Blackburn	Republican	Female
65. Martha McSally	Republican	Female
66. Martha Roby	Republican	Female
67. Matt Rosendale	Republican	Male
68. Mia Love	Republican	Female
69. Michelle Garcia Homes	Republican	Female
70. Mike Bishop	Republican	Male
71. Mike Braun ²	Republican	Male
72. Mike DeWine	Republican	Male
73. Mike Miller	Republican	Male
74. Mike Waltz	Republican	Male
75. Mimi Walters	Republican	Female
76. Pamela Evette	Republican	Female
77. Patrick Morrisey	Republican	Male
78. Paul Pate	Republican	Male
79. Randy Hultgren	Republican	Male
80. Rebecca Kleefisch	Republican	Female
81. Rick Saccone	Republican	Male

² Grey shading indicates a Republican candidate running against a pro-life Democrat.

82. Rick Scott		Republican	Male
83. Rob Blum		Republican	Male
84. Rodney Davis		Republican	Male
85. Ross Spano		Republican	Male
86. Saundra McDowell		Republican	Female
87. Steve Chabot		Republican	Male
88. Steve King		Republican	Male
89. Steve Knight		Republican	Male
90. Steve Pearce		Republican	Male
91. Susan Brooks		Republican	Female
92. Ted Budd		Republican	Male
93. Tim Walberg		Republican	Male
94. Tom McClintock		Republican	Male
95. Troy Balderson		Republican	Male
96. Vicky Hartzler		Republican	Female
97. Virginia Foxx		Republican	Female
98. Wendy Rogers		Republican	Female
99. Wink Hartman		Republican	Male
100. Young Kim		Republican	Female
101. Yvette Herrell		Republican	Female
Totals:	Candidates	% of republicans	% of women
	101	99.01%	42.57%

2016 Election Cycle		
<i>SBA List Endorsed Candidate³</i>	<i>Party</i>	<i>Gender</i>
1. Ann Wagner	Republican	Female
1. Barbara Comstock	Republican	Female
2. Cathy McMorris Rodgers	Republican	Female
3. Chris Smith	Republican	Male
4. Chuck Grassley	Republican	Male
5. Claudia Tenney	Republican	Female
6. Dan Frost	Republican	Male
7. Danny Tarkanian	Republican	Male
8. Diane Black	Republican	Female
9. Eric Greitens	Republican	Male
10. Frank Guinta	Republican	Male
11. Greg Gianforte	Republican	Male
12. Hans Reigle	Republican	Male
13. Ileana Ros-Lehtinen	Republican	Female
14. Jackie Walorski	Republican	Female
15. Jaime Herrera Beutler	Republican	Female
16. Jay Ashcroft	Republican	Male
17. John McCain	Republican	Male
18. John Mica	Republican	Male
19. Josh Hawley	Republican	Male
20. Kelly Ayotte	Republican	Female
21. Kristi Noem	Republican	Female
22. Lee Zeldin	Republican	Female
23. Liz Cheney	Republican	Female
24. Lloyd Smucker	Republican	Male
25. Lynn Jenkins	Republican	Female
26. Mac Warner	Republican	Male
27. Marco Rubio	Republican	Male
28. Mark Mioscia	Republican	Male
29. Marsha Blackburn	Republican	Female
30. Martha Roby	Republican	Female
31. Mia Love	Republican	Female
32. Mike Bishop	Republican	Male
33. Mimi Walters	Republican	Female
34. Pat McCrory	Republican	Male
35. Pat Toomy	Republican	Male
36. Richard Burr	Republican	Male
37. Rob Portman	Republican	Male
38. Rob Blum	Republican	Male
39. Roy Blunt	Republican	Male
40. Susan Brooks	Republican	Female

³ SBA List 2016 Election Report, available at <https://www.sba-list.org/2016-election-report>.

41. Tim Walberg		Republican	Male
42. Tom Garrett		Republican	Male
43. Tonia Khouri		Republican	Female
44. Trey Hollingsworth		Republican	Male
45. Vicky Hartzler		Republican	Female
46. Virginia Foxx		Republican	Female
Totals:	Candidates	% of republicans	% of women
	46	100%	45.65%

2014 Election Cycle		
<i>SBA List Endorsed Candidate⁴</i>	<i>Party</i>	<i>Gender</i>
1. Ann Wagner	Republican	Female
1. Barbara Cegavske	Republican	Female
2. Barbara Comstock	Republican	Female
3. Bill Cassidy	Republican	Male
4. Bobby Schilling	Republican	Male
5. Candice Miller	Republican	Female
6. Cathy McMorris Rodgers	Republican	Female
7. Curt Clawson	Republican	Male
8. Cynthia Lummis	Republican	Female
9. Darlene Senger	Republican	Female
10. David Perdue	Republican	Male
11. Diane Black	Republican	Female
12. Elise Stefanik	Republican	Female
13. Ileana Ros-Lehtinen	Republican	Female
14. Jackie Walorski	Republican	Female
15. Jamie Herrera Beutler	Republican	Female
16. Joni Ernst	Republican	Female
17. Kay Ivey	Republican	Female
18. Kim Reynolds	Republican	Female
19. Kristi Noem	Republican	Female
20. Leslie Rutledge	Republican	Female
21. Marilinda Garcia	Republican	Female
22. Marsha Blackburn	Republican	Female
23. Martha Roby	Republican	Female
24. Mia Love	Republican	Female
25. Mimi Walters	Republican	Female
26. Mitch McConnell	Republican	Male
27. Pam Bondi	Republican	Female
28. Pat Roberts	Republican	Male
29. Renee Ellmers	Republican	Female
30. Steve Daines	Republican	Male
31. Steve Pearce	Republican	Male
32. Steve Southerland	Republican	Male
33. Suzanne Scholte	Republican	Female
34. Terri Lynn Land	Republican	Female
35. Thom Tillis	Republican	Male
36. Tom Cotton	Republican	Male
37. Tom MacArthur	Republican	Male
38. Vicky Hartzler	Republican	Female

⁴ SBA List 2014 Election Report, available at <https://www.sba-list.org/2014-election-report>.

39. Virginia Foxx		Republican	Female
40. Wendy Rogers		Republican	Female
Totals:	Candidates	% of republicans	% of women
	40	100%	72.5%

2012 Election Cycle		
<i>SBA List Endorsed Candidate</i>	<i>Party</i>	<i>Gender</i>
1. Alecia Webb-Edgington ⁵	Republican	Female
2. Ann Duke ⁶	Republican	Female
3. Ann Wagner ⁷	Republican	Female
4. Bette Grand ⁸	Republican	Male
5. Bobby Schilling ⁹	Republican	Male
6. Cherilyn Eagar ¹⁰	Republican	Female
7. Jackie Walorski ¹¹	Republican	Female
8. Jim Renacci ¹²	Republican	Male
9. John Koster ¹³	Republican	Male
10. Jonathon Paton ¹⁴	Republican	Male
11. Karen Harrington ¹⁵	Republican	Female
12. Kevin Kramer ¹⁶	Republican	Male
13. Martha McSally ¹⁷	Republican	Female
14. Mia Love ¹⁸	Republican	Female
15. Ovide Lamontagne ¹⁹	Republican	Male

⁵ SBA List Candidate Fund Announces New Congressional Candidate Endorsements, Susan B. Anthony List, May 8, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-new-congressional-candidate-endorsements>.

⁶ Susan B. Anthony List Candidate Fund Announces First Round of 2012 Endorsements, Susan B. Anthony List, Dec. 6, 2011, available at <https://www.sba-list.org/newsroom/press-releases/susan-b-anthony-list-candidate-fund-announces-first-round-2012-endorsements>.

⁷ *Id.*

⁸ *Id.*

⁹ SBA List Candidate Fund Announces Next Round of Candidate Endorsements, Susan B. Anthony List, Apr. 3, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-next-round-candidate-endorsements>.

¹⁰ *Id.*

¹¹ Susan B. Anthony List Candidate Fund Announces First Round of 2012 Endorsements, Susan B. Anthony List, Dec. 6, 2011, available at <https://www.sba-list.org/newsroom/press-releases/susan-b-anthony-list-candidate-fund-announces-first-round-2012-endorsements>.

¹² SBA List Candidate Fund Announces Additional Endorsements, Susan B. Anthony List, Oct. 17, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-additional-endorsements>.

¹³ *Id.*

¹⁴ SBA List Candidate Fund Announces Additional Endorsements, Susan B. Anthony List, Oct. 17, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-additional-endorsements>.

¹⁵ SBA List Candidate Fund Announces New Congressional Candidate Endorsements, Susan B. Anthony List, May 8, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-new-congressional-candidate-endorsements>.

¹⁶ SBA List Candidate Fund Announces Additional Endorsements, Susan B. Anthony List, Oct. 17, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-additional-endorsements>.

¹⁷ *Id.*

¹⁸ SBA List Candidate Fund Announces New Congressional Candidate Endorsements, Susan B. Anthony List, May 8, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-new-congressional-candidate-endorsements>.

¹⁹ SBA List Candidate Fund Announces Additional Endorsements, Susan B. Anthony List, Oct. 17, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-additional-endorsements>.

16. Rebecca Kleefisch ²⁰		Republican	Female
17. Ron Desantis ²¹		Republican	Male
18. Steve King ²²		Republican	Male
19. Tommy Thompson ²³		Republican	Male
20. Vernon Parker ²⁴		Republican	Male
21. Wendy Long ²⁵		Republican	Female
Totals:	Candidates	% of Republicans	% of women
	21	100%	47.62%

²⁰ SBA List Candidate Fund Announces Next Round of Candidate Endorsements, Susan B. Anthony List, Apr. 3, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-next-round-candidate-endorsements>.

²¹ SBA List Candidate Fund Announces Additional Endorsements, Susan B. Anthony List, Oct. 17, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-additional-endorsements>.

²² Susan B. Anthony List Candidate Fund Announces First Round of 2012 Endorsements, Susan B. Anthony List, Dec. 6, 2011, available at <https://www.sba-list.org/newsroom/press-releases/susan-b-anthony-list-candidate-fund-announces-first-round-2012-endorsements>.

²³ SBA List Candidate Fund Announces Additional Endorsements, Susan B. Anthony List, Oct. 17, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-additional-endorsements>.

²⁴ Id.

²⁵ SBA List Candidate Fund Announces Next Round of Candidate Endorsements, Susan B. Anthony List, Apr. 3, 2012, available at <https://www.sba-list.org/newsroom/press-releases/sba-list-candidate-fund-announces-next-round-candidate-endorsements>.

Appendix 2

Overlapping Staff and Board Members				
	<i>Year</i>	<i>SBA List¹</i>	<i>APP²</i>	<i>APP Foundation³</i>
Sean Fieler	2017	Director	Chairman	Chairman
	2016	Director	Chairman	Chairman
	2015	Director	Chairman	Chairman
	2014	Director	Chairman	Chairman
	2013	Director	Chairman	Chairman
	2012	Director	<i>*Not listed</i>	Director
Francis Cannon ⁴	2017	Former Treasurer ⁵	President	President
	2016	Former Treasurer	President	President
	2015	Former Treasurer	President	President
	2014	Former Treasurer	President	President
	2013	Former Treasurer	Director	President
	2012	Treasurer (Partial 2012)	President/Director	President/Director

¹ Susan B. Anthony List Inc., Tax Filings By Year, *available at* <https://projects.propublica.org/nonprofits/organizations/541850126>.

² American Principles Project, Tax Filings By Year, *available at* <https://projects.propublica.org/nonprofits/organizations/264613397>.

³ American Principles Project Foundation, Tax Filings By Year, *available at* <https://projects.propublica.org/nonprofits/organizations/264442148>.

⁴ When Francis Cannon co-founded American Principles Project with Robert George, and Jeffrey Bell in 2009, Cannon was simultaneously advising Susan B. Anthony List through his public affairs firm, Capital City Partners LLC. *See* Greg Pierce, *Abortion Gap*, THE WASHINGTON TIMES, May 29, 2009; Susan B. Anthony List Inc., 2009 Form 990, filed June 24, 2010, *available at* https://projects.propublica.org/nonprofits/display_990/541850126/2010_08_EO%2F54-1850126_990O_200912. Cannon's firm, Capital City Partners, received \$139,263 in consulting fees from SBA List in 2009 while Cannon is listed as the Treasurer of the organization. *Id.*

⁵ Between 2012 to 2017 Francis Cannon has received a salary from the Susan B. Anthony List, Inc., despite being listed as former treasurer, Francis Cannon has received a salary from Susan B. Anthony List ranging from \$108,600 \$203,974 between 2013 to 2017 while receiving a salary from the American Principles Project. *See* Susan B. Anthony List Inc., Tax Filings By Year, *available at* <https://projects.propublica.org/nonprofits/organizations/541850126>.

Appendix 3

Sean Fieler Contributions to the Women Speak Out PAC		
Election Cycle	Receipt Date	Amount
Jan. 1, 2015 – Dec. 31, 2016 ¹	Aug. 3, 2015	\$75,000
Jan. 1, 2013 – Dec. 31, 2014 ²	July 9, 2014	\$385,946.12
Jan 1, 2011 – Dec. 31, 2012 ³	Oct. 11, 2012	\$75,000

¹ Sean Fieler Individual Contributions 2015-2016, Federal Election Commission, *available at* https://www.fec.gov/data/receipts/individual-contributions/?two_year_transaction_period=2016&committee_id=C00530766&contributor_name=Fieler,+Sean&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

² Sean Fieler Individual Contributions 2013-2014, Federal Election Commission, *available at* https://www.fec.gov/data/receipts/individual-contributions/?two_year_transaction_period=2014&committee_id=C00530766&contributor_name=Fieler,+Sean&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

³ Sean Fieler Individual Contributions 2011-2012, Federal Election Commission, *available at* https://www.fec.gov/data/receipts/individual-contributions/?two_year_transaction_period=2012&committee_id=C00530766&contributor_name=Fieler,+Sean&min_date=01%2F01%2F2011&max_date=12%2F31%2F2012.